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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,730	06/21/2001	John Joseph Curro	8594	6712

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EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/886,730

Applicant(s)

CURRO ET AL.

Examiner

Jenna-Leigh Befumo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 and 16-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 6-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1 – 5, drawn to a non-apertured elastic laminate web, classified in class 428, subclass 198.
 - II. Claims 6 – 15, drawn to an apertured elastic laminate web, classified in class 428, subclass 131.
 - III. Claims 16 – 23, drawn to a method for forming an elastic laminate web, classified in class 156, subclass 60⁺.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as clean room wipe or a medical fabric and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. Inventions III and Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as

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claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the nonwoven laminate can be made with the recited aspect ratio by bonding the three layers together as recited and then heating and stretching the fabric in the machine direction to produce bond sites and apertures with the recited aspect ratio.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. During a telephone conversation with Angie Stone on March 4, 2003 a provisional election was made without traverse to prosecute the invention of Group II, claims 6 – 15. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1 – 5 and 16 – 23 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Drawings

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “104” has been used to designate both supply roll for the first web and the supply roll for the second web. It is noted that according to the specification, the supply roll for the second should be number 105. A proposed drawing correction or corrected drawings are

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required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

8. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "130" has been used to designate both the central layer before it is bonded to the outer layers and the nip formed between rolls 134 and 136. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

9. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign not mentioned in the description: 102, in Figure 10. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

10. The drawings are objected to because the copies of the photographs, Figures 8, 17A, and 17B are mostly black and it is impossible to tell what the picture is suppose to be of. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 6 – 15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 3 of copending Application No. 09/886740. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structure of the products claimed is identical, with only the preamble or intended use of the product differing between the claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

13. Claims 6 – 15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 9 of copending Application No. 09/886828. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structure of the products claimed is identical, with only the preamble or intended use of the product differing between the claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

14. Claims 6 – 15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6 – 10 of copending Application No. 09/886829. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structure of the product claimed is identical, having three layers, where the two outer layer are bonded together at bond sited with the third apertured layer disposed between those two layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

15. Claims 6 – 15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10 – 27 of copending Application No. 09/467938. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structure of the product claimed is identical, having three layers, where the two outer layer are bonded together at bond sited with the third apertured layer disposed between those two layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

16. Claims 6 – 15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 9 and 21 – 30 of copending Application No. 09/584676. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structure of the product claimed is identical, having three layers, where the two outer layer are bonded together at bond sited with the third apertured layer disposed between those two layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

17. Claims 6 – 15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 20 of copending Application No. 09/553641. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structure of the product claimed is identical,

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having three layers, where the two outer layer are bonded together at bond sited with the third apertured layer disposed between those two layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

18. Claims 6 – 15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 - 20 of copending Application No. 09/553871. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structure of the product claimed is identical, having three layers, where the two outer layer are bonded together at bond sited with the third apertured layer disposed between those two layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Objections

19. Claims 8, 9, 11, and 14 are objected to because of the following informalities: in claims 8 and 9 the Applicant refers to the aspect ratio in terms of ratio, i.e., 3:1, while in claims 11 and 14 the Applicant refers to the aspect ratio as a single number, i.e., 2. While either form can be used, it is suggested that the Applicant be consistent throughout the claims and the specification when referring to the aspect ratio, so that it will not be confusing. Appropriate correction is required.

Claim Rejections - 35 USC § 102

20. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –



(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

21. Claims 6, 7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Srinivasan (5,567,501).

Srinivasan et al. discloses a thermally apertured nonwoven laminate comprising nonwoven outer layers bonded to a middle layer (abstract). The laminate is designed to be used as a topsheet in a diapers or personal care products (column 1, lines 12 – 17). Thus, additional layers would be placed adjacent to the apertured laminate. The laminate comprises two outer nonwoven layers and a middle film layer (column 1, lines 60 – 65). The apertures are formed under heat and pressure causing the middle layer to bond to the outer layers and shrink away from the heat forming apertures (column 2, lines 52 – 62). The fibers of each outer layer and the middle layer become fused together and form a fused border at each aperture (column 3, lines 15 – 22). Thus, the fibers of the outer layers will inherently be in contact at the edges of the apertures, which correspond to the applicant's bond sites. Also, since the apertures are formed using heat, the bonds between the outer layers are thermal bonds.

The middle layer can include various types of plastic films (column 4, lines 9 – 12), apertured plastic films (column 4, lines 43 – 45), or a nonwoven web comprising bi-component fibers (column 4, lines 52 – 60). Specifically, Srinivasan et al. teaches adding elastic properties to the laminate by using an elastomeric film as the middle layer (column 5, lines 4 – 10).

22. Claims 6, 7, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Palumbo(WO 96/10979).

Palumbo discloses a laminate with apertures comprising an upper layer, an intermediate, and a lower layer (page 3). The laminate is designed to be used as a coversheet in personal care



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products (page 1). The upper and lower layers are nonwoven webs (page 4). The intermediate layer is an elastic film comprising a thermoplastic elastomer (page 5). The laminate is produced by running the three layers through rollers with heated teeth which form the perforations in the laminate and thermally bond the layers together (page 7). Palumbo teaches that the outer layers are thermally bonded to each other at the edges of the perforations (page 7).

Claim Rejections - 35 USC § 103

23. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

24. Claims 8, 9, 11, 12, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Srinivasan et al.

The features of Srinivasan et al. have been set forth above. Even though Srinivasan fails to teach that the bond sites have an aspect ratio of at least about 2, Srinivasan discloses that the bond pattern can have one of a number of different geometries (column 6, lines 54 – 56). And Srinivasan teaches that the laminate can be stretched to enhance the aperture clarity and size (column 3, lines 54 – 57). Therefore, It would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the claimed aspect ratio, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215. One of ordinary skill in the art would stretch and orient the laminate to increase the clarity and size of the aperture, without stretching the laminate too much causing the laminate to tear or break. Further, one of ordinary skill in the

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art would want to optimize the amount of air and liquid which can travel through the laminate so that the laminate will be comfortable when worn against the skin in absorbent products.

Therefore, claims 8, 9, 11, 12, 14, and 15 are rejected.

25. Claims 8, 9, 11, 12, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palumbo.

Palumbo discloses that the size and spacing of the perforation can be chosen according to the intended use (page 9). Further, Palumbo discloses the perforations can be the same as those described in EP-A-207904, which includes elliptical shape. Therefore, it would have been obvious to one of ordinary skill in the art choose the claimed aspect ratio, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. One of ordinary skill in the art would be motivated to choose the shape based on the strength of the laminate produced as well as the comfort of the fabric when it is used next to the skin. Additionally, the preamble limitations are considered to be intended use of the laminate materials and do not add further structure to the claimed structure. Thus, claims 8, 9, 11, 12, 14, and 15 are rejected.

26. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Srinivasan et al. as applied to claim 11 above, and further in view of Abuto et al. (5,788,684).

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Palumbo as applied to claim 11 above, and further in view of Abuto et al.

The features of Srinivasan et al. and Palumbo have been set forth above. Srinivasan et al. and Palumbo disclose that the laminates can be used in absorbent articles. Abuto et al. is drawn to absorbent articles. Abuto et al. discloses that superabsorbent particles are mixed into the absorbent core of absorbent articles to increase the amount of liquid retention of the article and

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allow manufacturers to make thinner absorbent articles (column 1, lines 30 – 35). As the superabsorbent materials absorb liquid they become gel. Therefore, it would have been obvious to one of ordinary skill in the art to used an absorbent core with a superabsorbent gelling material in the absorbent articles taught by Srinivasan et al. or Palumbo so that a thinner absorbent article that is capable of absorbing more liquid is produced. Therefore, claim 13 is rejected.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. The examiner can normally be reached on Monday - Friday (9:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jenna-Leigh Befumo
March 22, 2003



ELIZABETH M. COLE
PRIMARY EXAMINER